

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

MELTON SMITH,

Plaintiff,

v.

ESCANDONE, FISHER, DEGROOT,
HEMINGWAY,

Defendants.

Case No. 1:22-cv-01491-JLT-HBK (PC)

**ORDER ADOPTING FINDINGS AND
RECOMMENDATION**

(Doc. 6)

Plaintiff, Melton Smith, commenced this action by filing a pro se civil rights complaint under 42 U.S.C. § 1983. (Doc. 1.) The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

In conjunction with filing his complaint, Plaintiff also filed a motion to proceed *in forma pauperis*. (Doc. 2., “IFP Motion”) Plaintiff’s IFP motion did not include a certified copy of his trust fund account statement and the “Certificate” portion was left blank. (*Id.* at 2.) On November 28, 2022, the Magistrate Judge denied, without prejudice, Plaintiff’s IFP motion and ordered him to (1) submit a new application to proceed in forma pauperis completing the “Certificate” section of the application or include his prison trust account statement reflecting the 6 months of transaction proceeding the filing of the complaint; or (2) pay the \$402.00 filing fee. (Doc. 4.) Plaintiff was given twenty-one days to exercise one of the two aforementioned options, and the

1 Court included a blank IFP application form with its Order. (*Id.*) The Magistrate Judge further
2 warned Plaintiff that his failure to timely comply with the November 28, 2022 Order would result
3 in a recommendation that the action be dismissed for Plaintiff's failure to prosecute and/or
4 comply with a court order. (*Id.* at 2.) Plaintiff did not file a new application to proceed in forma
5 pauperis and he did not pay the \$402.00 filing fee. *See* docket. On January 26, 2023, the
6 Magistrate Judge filed a Findings and Recommendations recommending the case be dismissed for
7 Plaintiff's failure to prosecute, which was served on Plaintiff and contained notice that Objections
8 to the Findings and Recommendations were to be filed within fourteen days. (Doc. 6.) Plaintiff
9 did not file any objections and the time to do so has expired. *See* docket.

10 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), the Court has conducted a
11 de novo review of this case. Having carefully reviewed the entire file, the Court finds the
12 Findings and Recommendations to be supported by the record and by proper analysis.

13 ACCORDINGLY, it is ORDERED:

- 14 1. The Findings and Recommendation, filed on January 26, 2023, is adopted in full; and
15 2. The Clerk of Court shall terminate any pending motions, close this case, and enter
16 judgment against Plaintiff.

17
18 IT IS SO ORDERED.

19 Dated: **February 28, 2023**


UNITED STATES DISTRICT JUDGE